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10/017,304	12/11/2001	Yao Wang	EMC-01-201	7237

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EXAMINER	
ENGLAND, DAVID E	
ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/017,304	WANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David E. England	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 May 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/31/2005 *DC*

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. Claims 1 – 28 are presented for examination.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 5, 6, 12, 13, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The claim limitation of, “data copying rate” is not disclosed in the specification in a way for one of ordinary skill in the art to come to a conclusion as to the difference between “data transfer rate” and “data copying rate”. Applicant is asked to amend the claim language to reflect what is common terminology utilized in their specification.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 16, 18 – 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby et al. (6449647) (hereinafter Colby) in further view of Chiou et al. (6792507) (hereinafter Chiou).

7. Referencing claim 1, as closely interpreted by the Examiner, Colby teaches a method for managing network resources for transfer of data stored on a first data storage system to a second data storage system, the method comprising the computer-executed steps of:

8. requesting from a server for services on an internet network, a bandwidth for data transfer from a first data storage system to a second data storage system over the internet network based on the amount of data to be transferred, (e.g. col. 2, line 65 – col. 3, line 9);

9. transferring data in response to a bandwidth allocation from the server based on the request, (e.g. col. 9, lines 5 – 24);

10. monitoring internet network traffic characteristics during the data transfer, (e.g. col. 9, lines 5 – 24); and

11. responsive to the monitored internet network traffic characteristics, selectively requesting an effect on bandwidth allocation, (e.g. col. 9, lines 5 – 24), but does not specifically teach managing network resources for copying data stored on a first data storage system to a second data storage system, wherein each data storage system includes an array of data storage devices on which data involved in the copying is stored; and

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12. copying data.
13. Chiou teaches managing network resources for copying data stored on a first data storage system to a second data storage system, wherein each data storage system includes an array of data storage devices on which data involved in the copying is stored, (e.g., col. 7, lines 20 – 47 & col. 10, lines 37 – 63, “*update*”); and
14. copying data, (e.g., col. 10, lines 37 – 63, “*update*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because when the requesting hosts and the target devices are geographically separated as in the Internet environment, their distributed cache scheme implementation may not always produce the desired performance gains due to the data transmission latency across wide area networks, therefore copying data to devices that are geographically closer to requesting hosts lessens the latency of data transferred and bandwidth consumption.
15. Referencing claim 2, as closely interpreted by the Examiner, Colby teaches the effect requested is to increase bandwidth allocation, (e.g. col. 9, line 36 – col. 10, line 8).
16. Referencing claim 3, as closely interpreted by the Examiner, Colby teaches the request is in accordance with a Java-based protocol, (e.g. col. 5, lines 28 – 48).
17. Referencing claim 4, as closely interpreted by the Examiner, Colby teaches the effect requested is to increase bandwidth allocation is based on the data transfer not meeting at least one performance criterion, (e.g. col. 9, line 36 – col. 10, line 8), but does not specifically teach

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copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63, “*update*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

18. Referencing claim 5, as closely interpreted by the Examiner, Colby teaches the at least one performance criterion is based on a predetermined data transfer rate, (e.g. col. 9, line 36 – col. 10, line 8), but does not specifically teach copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63, “*update*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

19. Referencing claim 6, as closely interpreted by the Examiner, Colby teaches the effect requested is to increase bandwidth allocation is based on the data transfer lagging behind based on the predetermined data transfer rate, (e.g. col. 9, lines 5 – 24 & TABLE 1), but does not specifically teach copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63, “*update*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

20. Referencing claim 7, as closely interpreted by the Examiner, Colby teaches the monitored internet network traffic characteristics include information regarding packet latency and the data transfer lagging behind is further based on packet latency, (e.g. col. 9, lines 5 – 35), but does not specifically teach copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63,

*"update"*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

21. Referencing claim 8, as closely interpreted by the Examiner, Colby teaches the monitored internet network traffic characteristics include information regarding packet loss and the data transfer lagging behind is further based on packet loss, (e.g. col. 9, lines 5 – 24 & TABLE 1), but does not specifically teach copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63, *"update"*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

22. Referencing claim 9, as closely interpreted by the Examiner, Colby teaches the data transfer is at least part of a data replication process, (e.g. col. 9, lines 5 – 24 & col. 10, lines 10 – 32), but does not specifically teach copying data. Chiou teaches copying data, (e.g., col. 10, lines 37 – 63, *"update"*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiou with Colby because of similar reasons stated above.

23. Referencing claim 16, as closely interpreted by the Examiner, Colby teaches the data replication is carried out in accordance with a replication policy, (e.g. col. 5, lines 29 – 48).

24. Claims 10 – 15, 18 – 26 and 28 are rejected for similar reasons stated above.

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25. Claims 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby and Chiou as applied to claims 1, 9, 16, 18, 19 and 26 above, and in view of Lyon et al. (6028841) (hereinafter Lyon).

26. As per claim 17, as closely interpreted by the Examiner, Colby and Chiou do not specifically teach the replication policy defines replication groups including devices distributed between the first and second data storage systems and the data replication process is completed when all devices in the replication groups are synchronized. Lyon teaches the replication policy defines replication groups including devices distributed between the first and second data storage systems and the data replication process is completed when all devices in the replication groups are synchronized, (e.g. col. 6, lines 7 – 15). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Lyon with the combine system of Colby and Chiou because synchronizing all devices would guarantee that all control functions see identical stimuli.

27. Claim 27 is rejected for similar reasons as stated above.

#### *Response to Arguments*

28. Applicant's arguments with respect to claims 1 – 28 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

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29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

31. a. Dekoning et al. U.S. Patent No. 6895485 discloses Configuring and monitoring data volumes in a consolidated storage array using one storage array to configure the other storage arrays.

32. b. Otterness et al. U.S. Patent No. 6654831 discloses Using multiple controllers together to create data spans.

33. c. Grant et al. U.S. Patent No. 6721862 discloses Method and circuit for replicating data in a fiber channel network, or the like.

34. d. Aziz et al. U.S. Patent No. 6597956 discloses Method and apparatus for controlling an extensible computing system.

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35. e. Ko et al. U.S. Patent No. 5479407 discloses Channel utilization method and system for ISDN.

36. f. Basu et al. U.S. Patent No. 6868439 discloses System and method for supervising use of shared storage by multiple caching servers physically connected through a switching router to said shared storage via a robust high speed connection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England  
Examiner  
Art Unit 2143

De *DE*

*Wm C Vaughn*  
WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER